IN THE

in the

Supreme Court of the United States

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MICHAEL RODAK, JR., CLERK

October Term, 1976

No. 75-1542

FRANCES OWEN WARRINER,
a/k/a FRANCES O. WARRINER,

Petitioner,

vs.

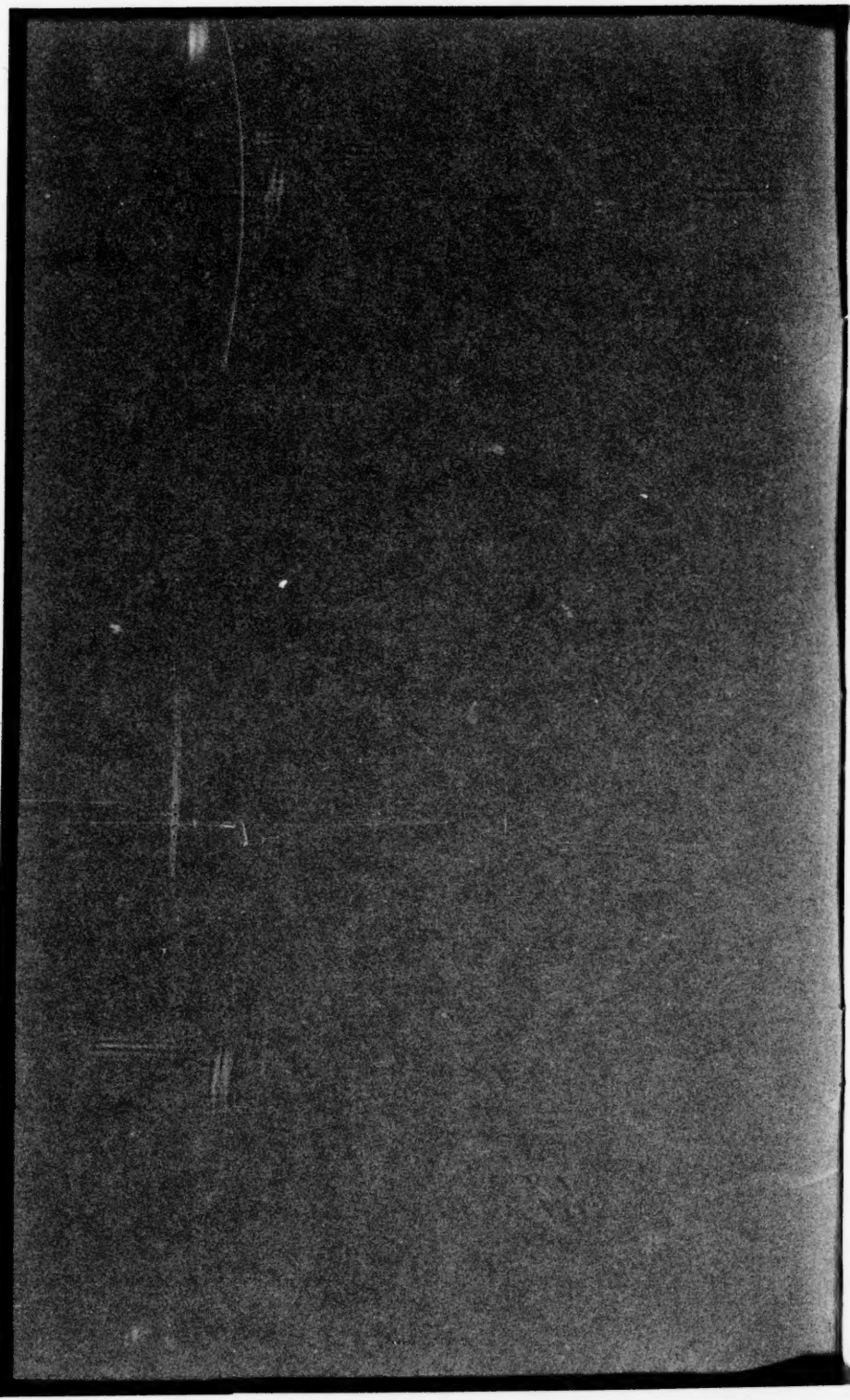
MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN, SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix, C. T. A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

FRANCES OWEN WARRINER,
2735 S.W. 19th Terrace, Apt. #3,
Miami, Florida 33135
In Proper Person, For Petitioner.

MIAMI REVIEW — 371-4625 — 377-5721



INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT	6
The Factual Background	6
The New Beginning	8
The Case of Civil Rights	10
The Instant Action	13
FEDERAL QUESTIONS TIMELY RAISED	17

INDEX (cont.)

	Page
REASONS FOR GRANTING THE WRIT	19
I	
This Court has recently granted Certiorari on substantially the same question arising in State proceeding.	19
II	
The Decision below has so far departed from the accepted course of judicial proceedings and the prior Decisions of this Court as to warrant review.	21
III	
The result achieved by the Decision below should not be sanctioned by this Court.	23
CONCLUSION	25

BLEED THROUGH

INDEX TO APPENDIX

Decision by Florida Supreme Court
October 30, 1975 ..... App. 1

Order (denying Petition for Rehearing, etc.,)
January 28, 1976 ..... App. 2

Opinion by Third District Court of Appeal
February 25, 1975 ..... App. 3

Order (denying rehearing)
April 22, 1975 ..... App. 6

Order by Monroe County Circuit Court
November 21, 1973 ..... App. 7

Order (denying rehearing)
January 3, 1974 ..... App. 10

Certificate of Clerk, (Monroe County) ..... App. 12

Opinion by United States Court of Appeals
Fifth Circuit,
September 13, 1962 ..... App. 14

Judgment, September 13, 1962 ..... App. 22

Order by United States District Court
March 3, 1964 ..... App. 23

INDEX TO APPENDIX (cont.)

Order by United States Court of Appeals
Fifth Circuit,
March 3, 1964 ..... App. 25

Order by Circuit Court of Monroe County
May 9, 1967 ..... App. 27

Order Granting Motion to Dismiss (Counterclaim)
August 2, 1967 ..... App. 29

Order (denying rehearing) August 2, 1967 ..... App. 31

Opinion by Third District Court of Appeal
May 21, 1968 ..... App. 32

Decision by Florida Supreme Court
March 7, 1969 ..... App. 33

Order by Supreme Court of the United States
(denying petition for certiorari, memo.)
January 12, 1970, Rehearing denied
March 23, 1970 ..... App. 34

Order by United States District Court
June 23, 1971 ..... App. 35

Order by United States Court of Appeals,
Fifth Circuit
November 10, 1971 ..... App. 40

BLEED THROUGH

AUTHORITIES CITED

Case	Page
Adams v. Citizens Bank of Brevard, 248 So.2d 682 (1971)	10
Adkins v. E. I. duPont de Nemours & Co., 335 U.S. 331	13
Alexander v. First National Bank of Titusville, 275 So.2d 272 (1973)	14
Armstrong v. Manzo, 350 U.S. 552 (1965)	8
Banco Continental v. Curtiss National Bank of Miami Springs, 406 F.2d 510 (1969)	12
Bell v. Hood, 327 U.S. 678	12
Boddie v. Connecticut, 401 U.S. 371 (1971)	13
Fuentes v. Shevin, 407 U.S. 67 (1972)	19-20
Grannis v. Ordean, 234 U.S. 385	19
Griffin v. Griffin, 327 U.S. 220 (1946)	22

AUTHORITIES CITED (cont.)

Case	Page
Griffin v. Illinois, 351 U.S. 12	13
Hoffman v. Halden, 268 F.2d (1959)	12
Hovey v. Elliott, 167 U.S. 409	18-19-21
Johnson v. First National Bank, 223 F.2d 31 (1955)	25
Johnson v. Virginia, 373 U.S. 61 (1963)	26
Klor v. Hannon, 278 F.Supp. 359	12
Mason v. City of Biloxi, 385 U.S. 370	25
Mayflower Inv. v. Brill, 188 So. 205 (1939)	17
O'Boyle v. Bevil, 259 F.2d 506 (1959)	22
Seaboard Coast Line R. Co. v. Industrial Contracting Co., 260 So.2d 860 (1972)	9

BLEED THROUGH

AUTHORITIES CITED (cont.)

Case	Page
Selio v. Johnson, 201 F.Supp. 475 (1962)	12
Seven-Up Bottling Co. v. George Const. Co., 108 So.2d 260 (1964)	22
Simon v. Southern Railroad Co., 236 U.S. 115 (1915)	25
Wells Fargo & Co. v. Taylor, 254 U.S. 175	25
Windsor v. McVeigh, 93 U.S. 274	18-19

CONSTITUTIONAL AND STATUTORY AUTHORITIES

	Page
Constitution of the United States	
Article III, Section 2	3
Article IV	3
Article VI	4-12
Amendment V	4-12
Amendment VII	4-12
Amendment XIV, Section 1	4-12
Title 28, United States Code, §1254(1)	2
Title 28, United States Code, §1257(3)	2
Title 28, United States Code, §1331	12
Title 28, United States Code, §1343(1, 3 & 4)	12
Title 28, United States Code, §1915(a, c & e)	13
Title 28, United States Code, §2283(2 & 3)	25
Title 42, United States Code, §1983	5-12
Title 42, United States Code, §1985(3)	5-12
Florida Statutes 687.07 (Usury)	7
Florida Rules of Civil Procedure, Rule 1.540(b)	13

BLEED THROUGH

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NO._____

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a/k/a FRANCES O. WARRINER,

Petitioner,

vs.

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN, SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix, C. T. A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ, individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida,

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

OPINIONS BELOW

The opinion in the Supreme Court of Florida, and the order of the Supreme Court of Florida upon denial of the petition for rehearing, clarification of opinion and suggestion for rehearing *en banc*, (Appendix 1-2) is not yet reported. The decision of the District Court of Appeal, Third District of Florida, (Appendix 3-6) is reported at 310 So.2d 375, (Fla.App. 1975). The decision and order of the Circuit Court of the Sixteenth Judicial Circuit of the State of Florida, in and for Monroe County, is at Appendix 7-11; and the Initial Decision of the United States Court of Appeals, Fifth Circuit, and Judgment, reported in 307 F.2d 933 (1962), is also appended.

JURISDICTION

The Judgment of the Supreme Court of Florida was entered October 30, 1975. Timely petition for rehearing, clarification of opinion and suggestion for rehearing *en banc*, were denied January 28, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), and 28 U.S.C. §1257(3).

QUESTION PRESENTED

A divided Court below,[1] ignoring the guarantees of the individual rights, privileges and immunities under the Constitution of the United States has by the persuasion of "Comity", and its interpretation as to the finality of State Court judgment, pre-empted jurisdiction of State and Federal Court, for relief from fraudulent, unalterably void

[1]The Court of Appeals' original decision was 2-1, and appears in Appendix 14-21.

BLEED THROUGH

judgment, without the intervention of this Supreme Court by Writ of Certiorari. The important question presented is whether the decision, and resulting decisions so far depart from the accepted course of judicial proceedings and controlling decisions of this Supreme Court so as to warrant review, particularly since the void judgment, obtained by fraud upon the court, and rendered without jurisdiction, deprives petitioner of clear title to her properties, without an opportunity to appear or be heard *before* her rights were taken away, and given to a person to whom she was not indebted, and who had no standing before the said Court; and if left unchecked, may result in similar abuses, and extensive substantial loss, and be a mockery of our revered Constitution of the United States of America.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States

Article III, Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;...."

Article IV, Sections 1 & 2:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Article VI:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

". . . and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . ."

Amendment V.

"No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

Amendment VII:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved . . ."

Amendment XIV, Section 1:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

BLEED THROUGH

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Civil Rights

Title 42 United States Code §1983, Civil Action for the deprivation of rights:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 42 United States Code §1985, Conspiracy to interfere with civil rights—Preventing officer from performing duties—Depriving persons of rights or privileges:

"(3) If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons en-

gaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

STATEMENT

This action was brought to review the final orders of the Florida Supreme Court and its refusal of relief from, and redress for, the recurring damage and deprivation of rights, resulting from an insidious conspiracy and sophisticated scheme put into effect to deprive petitioner of title to her very valuable properties, under pretense of law, *by a fraudulent "Final Decree of Foreclosure", rendered without jurisdiction, without due process of law, without evidence, without proof of the ownership of note or mortgage; without the production of the note sued upon, or even so much as an affidavit of indebtedness.* This was accomplished by using the United States Mails to defraud, by letter, enclosing an unauthorized "*Stipulation*" and a prepared "*Final Decree of Foreclosure*", to be entered by the Court.

The Factual Background

On October 26, 1950, HAROLD KASSEWITZ filed Bill to Foreclose Mortgage, for HARRY FINK, Plaintiff, who claimed *falsely* therein, to be the owner of the *note* sued upon. Answer for FRANCES O. WARRINER, Defendant, was prepared by B. R. CISCO, denying the debt

and all other material allegations, which was timely filed November 28, 1950. On Friday, December 29, 1950, then JUDGE AQUILINO LOPEZ, JR., entered and filed the "*Final Decree of Foreclosure*", together with the unauthorized "*Stipulation*",[2] executed *only* by the attorneys, *without notice or hearing.*

Petitioner on learning of this outrage, fired B. R. CISCO, and employed LELAND HYZER, who filed her MOTION TO SET ASIDE FINAL DECREE AND MASTER'S SALE, *which was under oath, and repudiated the unauthorized stipulation, entered without her knowledge, consent or approval; and requested an opportunity to present her defense.*[3]

JUDGE AQUILINO LOPEZ, JR., then *knowingly* deprived her of her guaranteed rights under Amendments V and XIV of the Constitution of the United States of America.

Interlocutory Appeal was timely filed, and dismissed on motion of HARRY FINK of false statements.

"ORDER CONFIRMING SALE", which included a deficiency decree in the amount of $6,951.52, was rendered *surreptiously, without notice or hearing;* and *right to redeem denied.*

Petitioner at all times had a *meritorious* defense of usury and failure of consideration.

Successive Suits for relief, in State and Federal Courts, at all levels, were with repeated regularity dis-

[2]See Certificate of the Clerk, Appendix 12-13.

[3]Armstrong v. Manzo, 380 U. S. 552 (1965); Grannis v. Ordean, 234 U.S. 385.

missed, quashed, or denied jurisdiction or certiorari, without any consideration on the "*merits*" whatsoever.

The New Beginning

On or about December 15, 1966, HAROLD KASSEWITZ, finally produced the Original "NOTE", for the first time, in his office, for FRANCES OWEN WARRINER to see, at which time he made and gave to her a true copy of both the *FRONT AND BACK* of said "NOTE", a Xerox copy, *which shows without question, that HARRY FINK was NEVER the owner of the note sued upon by him, he was NOT the real party in interest, the Monroe County Circuit Court had NO jurisdiction, and its decree and orders were VOID, unequivocally void, of no force or effect, incapable of cure or ratification or enforcement.*

MARILYN KAY, now known as MARILYN FERNANDEZ, had retained her ownership of the "NOTE", executed in connection with the mortgage on the Subject Properties, which had been endorsed over to her, as planned, by HENRY H. HERMAN, an associate of her father, SAM KAY, in these words:

> "Pay to the order of Marilyn Kay, without recourse."
>
> /s/ HENRY H. HERMAN

No other endorsement appears thereon!!!

HAROLD KASSEWITZ agreed to obtain a Quit Claim Deed from HARRY FINK to petitioner, but later refused to do so.

BLEED THROUGH

Without delay, on December 23, 1966, petitioner recorded in the Official Records of Monroe County her "NOTICE" and "WARRANTY DEED", from FRANCES O. WARRINER to FRANCES OWEN WARRINER; which advised, apprised and notified all persons, whomsoever, that the Final Decree of Foreclosure, so rendered, was VOID, of no force or effect; and that all deeds, conveyances, mortgages and titles flowing therefrom, were equally void, involving the Subject Properties.

On February 7, 1967, MARILYN FERNANDEZ filed a Quiet Title Action, *against* FRANCES OWEN WARRINER, in the Circuit Court of Monroe County, Case No. 1-93; which was a whole NEW BALL GAME, "*a new identity of the thing sued for*", and "*a new cause of action*".[4] JUDGE AQUILINO LOPEZ, JR., filed "Certificate of Disqualification", and JUDGE MARSHALL C. WISEHEART, was assigned the case.

Petitioner filed "A N S W E R AND COUNTERCLAIM"; JUDGE WISEHEART, forthwith, dismissed the "COUNTERCLAIM", with leave to amend; but before the time allowed, he heard, over the objections of FRANCES OWEN WARRINER, the real, legal and equitable and record owner of the Subject Properties, and granted to MARILYN (KAY) FERNANDEZ, a so-called, "*Partial Summary Judgment*", based solely on her *false affidavit*, filed that day, May 9, 1967, which was properly, timely opposed by FRANCES OWEN WARRINER, the REAL OWNER OF THE SUBJECT PROPERTIES; and in furtherance of *known fraud*, when the AMENDED COUNTERCLAIM, was timely filed, which demanded

[4]Seaboard Coast Line R. Co. v. Industrial Contracting Co., 260 So.2d 860, Fla. 4th Dist. 1972.

TRIAL BY JURY, properly, he forthwith, *without notice or hearing thereon,* dismissed it, saying he had already decided the case, and had given the Subject Properties to MARILYN FERNANDEZ.[5] The said Court's expressed view was: "*that they had gotten by with it*" and "*that there are a lot of criminals running around loose.*"

Before the Court was positive proof that petitioner had obtained her "*root of title*" by legal means, and MARILYN FERNANDEZ, by premeditated fraud, deceit, manipulations, machinations and corruption; and this extensive evidence was undisputed and indisputable.

Nonetheless, the Appellate Court "Affirmed"; the Florida Supreme Court denied jurisdiction; and this Supreme Court of the United States denied Certiorari, January 12, 1970, with rehearing denied March 23, 1970.

The Case of Civil Rights

On September 16, 1970, FRANCES OWEN WARRINER, as Plaintiff, filed her "CIVIL ACTION COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, AND FOR THE DEPRIVATION OF RIGHTS, AND OTHER AND FURTHER RELIEF", in the United States District Court, Southern District of Florida, Case No. 70-1356, *against:*

> "MARSHALL C. WISEHEART and AQUILINO LOPEZ, JR., each individually, and each as JUDGES of the Sixteenth Judicial Circuit, in and for Monroe County, Florida; HARRY FINK, IRVING POL-

[5]Adams v. Citizens Bank of Brevard, 248 So.2d 682, Fla. 4th Dist. 1971.

BLEED THROUGH

LACK and HAROLD KASSEWITZ, individually; MARILYN FERNANDEZ, individually, a free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as MARILYN KAY, the wife of PAUL GOODLEMAN, SAM BERGER and BEN GOULD, and as the legal GUARDIAN of SAM KAY, her father; SAM KAY, individually; MARILYN FERNANDEZ and SAM KAY, each as the last officers and directors of the dissolved Florida corporations, LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; T. J. INVESTMENT CO., licensed and organized to do business in the State of Florida, ANTHONEY ROMANO and JOSEPHINE ROMANO, each individually and as officers, agents, employees and servants of said corporation; OCEANADA CORP., licensed and organized to do business in the State of Florida, WILLIAM G. KRANICH and JAMES L. DORMAN, each individually and as officers, agents, employees and servants of said corporation; MONROE LAND TITLE CO., licensed and organized to do business in the State of Florida, C. G. (BEBE) REBOZO and THOMAS H. WAKEFIELD, each individually and as officers, agents, employees and servants of said corporation,

Defendants.

Complaint consisting of three Counts, was detailed, distinct and definite; and of appropriate significance for the purpose intended, namely with specificity to enforce her important Constitutional and Civil Rights; for the unrestricted use, enjoyment and benefit of her very valuable properties; and for redress and damages, both compensatory and punitive; and other and further relief, prop-

erly prayed, and clearly and carefully invoked the Court's jurisdiction, pursuant to the provisions of Title 28, United States Code §1331, §1343, and Title 42, United States Code §1983 and §1985, in pertinent parts; and in most explicit terms attacked the prior State and Federal Court's actions as violative with particularity, Article VI, and Amendments V, VII and XIV of the United States Constitution; and stated that the amount in controversy exceeded Ten Thousand and No/100 Dollars, exclusive of interest and costs; and demanded TRIAL BY JURY. LIS PENDENS was also filed, and all parties defendants, were properly served, including where required, the Attorney General for the State of Florida; the Secretary of State; and the Dade County Attorney.

Defendants' prestigious and otherwise talented Attorneys filed motions to dismiss of varying degrees of intensity, which alleged "*res judicata*" and "*lack of jurisdiction*" and citing as proof thereof, the Initial Decision of the United States Court of Appeals, Fifth Circuit, *Frances O. Warriner v. Harry Fink, et al.*, 307 F.2d 933, (1962) (App. 14-22).

This gravely important case was brought in accordance with *Banco Continental v. Curtiss National Bank of Miami Springs, et al.*, 407 F.2d 510 (1969); *Bell v. Hood*, 327 U.S. 678; and under the Civil Rights Act, as in *Hoffman v. Halden*, 263 F.2d 280, 294 (1959); *Klor v. Hannon*, 278 F.Supp. 359; and *Selio v. Johnson*, 201 F.Supp. 475 (1962).

JUDGE CHARLES B. FULTON heard defendants' motions to dismiss, but did not rule. On November 2, 1970, petitioner, desiring to take depositions and obtain tran-

BLEED THROUGH

scripts, sought to do so In Forma Pauperis, which was otherwise beyond her financial capability. Petitioner had paid all prior fees and expenses.

On April 6, 1971, petitioner was run down by a car where she was walking on the sidewalk, very seriously injured, and taken unconscious to the hospital.

Seven months after said motion had been filed, the Court, on June 21, 1971, in the face of *Boddie v. Connecticut*, 401 U.S. 371, 1971, and ignoring the fact that petitioner had paid the filing fee and other prior expense, denied motion to proceed in forma pauperis; and in total disregard of petitioner's rights, dismissed the action. See also *Griffin v. Illinois*, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585, 55 ALR 2d 1055.[6] Of course petitioner is not the criminal, she is the victim. The Fifth Circuit Court of Appeals dismissed Appeal, and this Court denied Certiorari. (App. 35-40).

The Instant Action

Complaint filed February 9, 1973 was dismissed, and AMENDED COMPLAINT WITH LEAVE OF THE COURT was filed together with LIS PENDENS, timely June 28, 1973, and is specific as was directed by JUDGE M. IGNATIUS LESTER. This multiple cause of action was brought to enforce petitioner's Constitutional and Civil Rights; for relief from the VOID judgments under attack, and pursuant to Florida Rules of Civil Procedure, rule 1.540(b), by

> ". . . an independent action to relieve a party from a judgment . . . or to set aside a judgment . . . for fraud upon the court."

[6]Title 28 United States Code. §1915 (1-3, 4) Adkins v. E. I. duPont de Nemours & Co. 335 U.S. 331.

where as in this case, the misrepresentations in the original action mislead the Court, as to its jurisdiction over the person of the defendant and the subject matter, and the misrepresentations also prevented the defendant, as herein, from presenting a defense in the original action, and it is no longer equitable that the judgment should have prospective application.[7]

When JUDGE LESTER examined the Amended Complaint, and the prior records, which showed clearly and unequivocally, that it was TRUE, not only by virtue of motions to dismiss, which presumed it true, he recused himself, and JUDGE BILL G. CHAPPELL took over.

MORRIS FOX and JEAN FOX moved to dismiss, alleging "*res judicata*", and TITLE GUARANTEE COMPANY filed its absurdity, to-wit:

> "That in paragraph 4, of Plaintiff's Amended Complaint she admits that she has never been deprived of subject property by due process of law. ERGO, Plaintiff's Amended Complaint should be forthwith dismissed with prejudice."

DEFAULT was entered against MARIO R. FERNANDEZ.

Petitioner presented *proof positive* of the fraud upon the Courts, and/or the active cooperation or corruption of the Courts to that end, including the *depositions* of HAROLD KASSEWITZ and his employee, HAROLD TANNEN, two of the initial perpetrators of the fraud; and of

[7] Alexander v. First National Bank of Titusville, 275 So.2d 272 (1973).

BLEED THROUGH

MARGARET LOY, who had been the Secretary and Bookkeeper of SAM KAY and his daughter, MARILYN (KAY) FERNANDEZ; and in addition, suggested Judicial Notice, that this controversy arose, NOT from a naughty happening, or mere error or irregularity, BUT FROM, *sinister, intentional, criminal acts of extraordinary dimensions, planned, calculated and executed with the expertise of organized crime; and that these crimes include, with precision:*

CONSPIRACY TO DEFRAUD;

FRAUD, INTRINSIC AND EXTRINSIC;

MALFEASANCE; OBSTRUCTION OF JUSTICE;

MISPRISION OF FELONY; PERJURY;

CONFLICT OF INTEREST; AND THE

DELIBERATE, DEPRIVATION OF RIGHTS GUARANTEED UNDER THE UNITED STATES CONSTITUTION OF AMERICA;

AND THE CIVIL RIGHTS ACT.

Citations, at length, of the carefully articulated opinions of this Supreme Court, and the Fifth Circuit Court of Appeals, granting relief from State Court Judgments or decrees, involving the deprivation of real property by fraud, or without due process, or without jurisdiction, were also presented.

"Defendants represented by Weinsoff and Weinsoff" filed Motion to Hold Plaintiff, Frances O. Warriner, in Contempt, referring to JUDGE WISEHEART'S ORDER, (App. 27-31) "*in that she caused to be filed in the Clerk's records of Monroe County Lis Pendens and deeds clouding title of Defendants*" and requested that she "*be incarcer-*

ated and fined to the fullest extent of the law", and that the action be dismissed. No deed or order was attached, nor otherwise identified.

Since the defenses were insufficient, petitioner filed Motion for Partial Summary Judgment, together with Affidavits, and pertinent evidence attached, and set same for hearing by Special Appointment.

At the ensuing hearing, ONLY defendants' motion to hold plaintiff in contempt was heard. It was a melee of shouts, accusations and abuse, without any semblance of judicial decorum; with the Court saying he thought that instead of holding her in contempt he was going to dismiss the suit, and this he did by ORDER of November 21, 1973, with Rehearing denied January 3, 1974.

The Court ignored the Amended Complaint, the undisputed facts, the Constitutional Questions raised, the affidavits and the extensive applicable memorandums of law.

Appeal was timely filed, and came on for oral argument, at which time Attorney WEINSOFF, waived before the Court a blue backed document, and stated, as in his Brief, that petitioner in disregard of JUDGE WISEHEART'S ORDER, "*filed new deed on December 19, 1972, from herself as Assignee of a corporation to herself, personally, thereby clouding title and violating the injunction.*"

Petitioner was prepared, she had executed two DEEDS on December 19, 1972, a "WARRANTY DEED" and a "QUIT CLAIM DEED", both on DADE COUNTY property; and had also recorded in the Official Records both DEEDS, and an "ASSIGNMENT", all to her from

HOLIDAY, INC., her then dissolved Florida corporation, all of which involved DADE COUNTY property. The Subject Properties are in MONROE COUNTY!!! And, at the direction of the Appellate Court, left TRUE COPIES of the Instruments with the Clerk.

This was typical of the extraordinary contrived lies, fraud and deceit, which petitioner has been forced to endure for more than twenty-five long, painful years.

With repetitious certainty, the Third District Court of Appeal, Affirmed February 25, 1975 and adopted MARILYN FERNANDEZ'S "memorandum" litney of cases in which petitioner had sought relief as a footnote, and, with rehearing denied April 22, 1975. The Florida Supreme Court denied jurisdiction October 30, 1975; with petition for rehearing, clarification of opinion, and suggestion for rehearing *en banc*, all denied January 28, 1976.

FEDERAL QUESTIONS TIMELY RAISED

From the discovery of the fraudulent Final Decree of Foreclosure, to the present, Constitutional Questions have been raised in each proceeding, and that is what this action is all about. The issues of Federal Importance were raised in the Amended Complaint, petitioner's affidavit, pleadings, memorandums of law, assignments of error; and in the Appellate Court, her Brief, and Reply Briefs, Appendixes; and in the Florida Supreme Court, in Brief on Jurisdiction, citing *Mayflower Inv. v. Brill*, 188 So. 205, Supreme Court Division B, 1939, accenting the guarantees under Amendments V and XIV, of the U.S. Constitution, to-wit:

> "It is fundamental that due process guarantees to a party notice and an opportunity to be heard *before* his rights are taken away from him by order, decree or judgement of any court. See Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed. 914; Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 842."

And, as a further reminder, in her Petition for Rehearing, and for clarification of opinion, that:

> "It is presumed by Petitioner, that since all "*judicial Officers, both of the United States and of the several States,*" are bound "*by Oath or Affirmation to support this Constitution:*" that is the Constitution of the United States of America, that the five judge panel, of JUDGES ADKINS, C. J. ROBERTS, OVERTON, ENGLAND AND SAUNDERS, JJ are cognizant of the contents, and individual guarantees, immunities and limitations, of our revered Constitution; and that *no person can be deprived of property without due process of law; that all persons are guaranteed equal protection under the laws of the Land*; that *trial by jury shall be preserved;* that "*this Constitution, and the Laws of the United States * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary, notwithstanding.*"

REASONS FOR GRANTING THE WRIT

The decision of the Florida Supreme Court to deny jurisdiction, repudiates the most basic, fundamental and enduring, important portions of the United States Constitution, and abridge the privileges and immunities guaranteed thereunder; and is such a departure of the principles established, and of such consequence as to warrant review and supervision of this Honorable Court.

I

This Court has recently granted Certiorari on substantially the same question in a State proceeding.

In a forceful articulated opinion, this Court speaking through Mr. Justice Stewart ruled, that an opportunity to be heard '*must be granted at a meaningful time and in a meaningful manner*' in *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); and that:

> "For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified" Baldwin v. Hale, 1 Wall, 223, 233, 17 L.Ed. 531. See Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed. 914; Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."

"The issue is whether procedural due process in the context of these cases requires an opportunity for a hearing *before* the State authorizes its agents to seize property in the possession of a person upon the application of another."

"It has long been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights . . . (And n)o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it."

"If the right to notice and hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that arbitrary taking that was subject to the right of procedural due process has already occurred. This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone."

"This is no new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments."

BLEED THROUGH

II

The Decision below has so far departed from the accepted course of judicial proceedings and the prior Decisions of this Court as to warrant review.

Strong ground has been taken by this Supreme Court and in strong language, against treating cases as in default which were not so; and this was the view in *Hovey v. Elliott*, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215, where it said:

> "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have an inherent power to deny all right to defend an action and to render decrees without any hearing whatever is in the very nature of things to convert the court exercising such authority into an instrument of wrong and oppression, and hence to strip it of the attribute of justice upon which the exercise of judicial power necessarily depends."

Throughout this controversy, petitioner has attacked the decree and judgements on the ground that procedural due process had not been observed in their rendition; and that they were each obtained by fraud upon the Courts; and/or the active cooperation and/or corruption of the Courts to that end; and the then defendants, have relied upon the said VOID judgements as their defense, and have prevailed, by the false allegation of "*res judicata*" or "*collateral estoppel*" by their attorneys.

This is in direct conflict with this Court's holding in time honored case of *Griffin v. Griffin*, 1946, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635, that.[8]

> "A judgement obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. . . . Moreover, due process requires that no other jurisdiction shall give effect, even as a matter of *comity*, to a judgement elsewhere acquired without due process."

It is well to remember that FRANCES OWEN WARRINER did NOT know, until, on or about December 15, 1966, that HARRY FINK had had NO STANDING before the Court, HE WAS NOT THE OWNER OF THE NOTE SUED UPON, the Monroe County Circuit Court had had NO JURISDICTION, and the said judgement was THRICE VOID.

It WAS obtained by fraud upon the Court.

It WAS rendered without due process of law.

It WAS rendered by Court WITHOUT JURISDICTION.

Without question is the FACT that such a judgement IS A VOID JUDGEMENT, cannot be *confirmed, affirmed* or *ratified*, but remains no better than its beginning, which is a nullity, a nothing, and like the multiplication of nothing, REMAINS NOTHING; NULL; INEFFECTUAL; NUGATORY; HAVING NO LEGAL OR BINDING EF-

[8]See also O'Boyle v. Bevil, 259 F.2d 506; and Seven-Up Bottling Co. v. George Const., 108 So. 260.

BLEED THROUGH

FECT; UNABLE TO SUPPORT THE PURPOSE FOR WHICH IT WAS INTENDED, and as stated in Black's Law Dictionary:

> "VOID JUDGEMENT. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex. Civ. App. 80 S.W.2d 1087, 1002. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Ex parte Meyers, 121 Neb. 56, 236 N.W. 143, 144. One that has merely semblance without some essential elements, as want of jurisdiction or failure to serve process or have party in court. Wellons v. Lassiter, 200 N.C. 474, 157 S.E. 434, 436. It is subject to collateral attack. Owens v. Cocroft, 14 Ga. App. 322, 80 S.E. 906, 907."

III

The result achieved by the Decision below should not be sanctioned by this Court.

The decision of the court below defies our heritage by our founding fathers of great and noble men dedicated to the protection of individual rights, and if allowed to

stand, would create havoc and have a devastating effect on our honored system of government; and could lead to further crime and corruption.

It is well to note the irreparable damage and destruction not only to petitioner's business as a real estate broker, but to her health; and also the ridicule and abuse she has suffered; and for the deprivation of the use, enjoyment, development and income from her very valuable properties, over a very long time.

The damage to the Subject Properties, by trespass, the removal of top soil, rock fill, of rare, tropical, irreplaceable trees; and colorful exotic tropical fish, from the lake, taken in abundance; and most important the devious encroachment on the land itself, which will require considered attention.

Additionally significant, however, is that the decision which results in these consequences—to say nothing of the financial consequences to petitioner—will stand as an aberration in the law.

Finally, if the decision below is permitted to stand it will symbolize the sanctioning of judicial interference with the carefully conceived provisions of the Constitution of these United States.

CONCLUSION

It is important to observe that when the Initial Decision by the U.S. Fifth Circuit Court of Appeals, was rendered, that petitioner did NOT know that HARRY FINK had NOT been the owner of the "NOTE" sued upon, because she had NEVER HAD HER DAY IN COURT; and further, at that point in time, the then NEW Federal Judicial Code, Title 28, Section 2283 (2-3), of the United States Code Annotated, then provided:

> "Excepting clause of present section 'restores' the basic law as generally understood and interpreted prior to the Toucey decision."

and *Simon v. Southern Railway Company*, 236 U.S. 115, (1915) and *Johnson v. First National Bank*, 10 Cir. 223 F.2d 31 (1955) was then good, effective law; as well as *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 41 S.Ct. 93, 65 L.Ed. 205. All of which was brought to the attention of this Supreme Court by petitioner, in her Petition for Writ of Certiorari, Case No. 817.

Under the circumstances of this case as set out above, petitioner believes the Court may conclude that the court below committed clear error, and that the appropriate relief is a summary reversal and remand for such further proceedings as may be appropriate. Cf. e.g. *Mason v. City*

of Biloxi, 385 U.S. 370; *Johnson v. Virginia*, 373 U.S. 61 (1963). Or, the Court may conclude that the cause should be set for briefs and argument.

The Supremacy of the United States Constitution and the Guarantees of Individual Rights should prevail over the persuasion of "Comity".

Respectfully submitted,

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In Proper Person for Petitioner

April 1976

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